Union Builders, Inc. *and* District Council 94, United Brotherhood of Carpenters and Joiners of America, AFL–CIO. Case 1–CA–31377

February 21, 1995

DECISION AND ORDER

BY MEMBERS STEPHENS, COHEN, AND TRUESDALE

On December 2, 1994, Administrative Law Judge Robert W. Leiner issued the attached decision. The Respondent filed exceptions and a supporting brief, the Union filed an answering brief, and the General Counsel filed a brief in support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Union Builders, Inc., West Warwick, Rhode Island, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Catherine E. D'Urso, Esq., for the General Counsel.
Andrew B. Prescott, Esq. (Tillinghast, Collins & Graham), of Providence, Rhode Island, for the Respondent.
Marc B. Gursky, Esq., of Providence, Rhode Island, for the Union.

DECISION

STATEMENT OF THE CASE

ROBERT W. LEINER, Administrative Law Judge. This matter was heard on October 27, 1994, in Boston, Massachusetts, on General Counsel's complaint, of March 30, 1994 (misdated March 30, 1993) which alleges, in substance, that Respondent, Union Builders, Inc. (sometimes UBI) violated Section 8(a)(5) and (1) of the Act by its refusal, commencing December 8, 1993, to furnish information requested by the Union, allegedly necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of unit employees.[1]

Respondent's timely answer admits certain allegations of the complaint, denies others, and denies the commission of unfair labor practices. In particular, Respondent denies that the Union had a reasonable belief that Respondent had been operating an ''alter ego'' and therefore has no right to the requested information. Affirmatively, Respondent defends on the ground (a) that the dismissal of the alter ego allegation in the Union's unfair labor practice charge ''moots the Union's request for information regarding O. Ahlborg, the perported alter ego''; and (b) that the complaint, based upon actions occurring prior to August 14, 1993, is barred by Section 10(b) of the Act.

At the hearing, all parties were separately represented by counsel, were given full opportunity to call and examine the witnesses, to submit relevant oral and written evidence, and to argue orally on the record. At the close of the hearing, the parties waived final argument and elected to file posthearing briefs all three of which have been received and carefully considered.

On the entire record, including the briefs, and on my observation of the demeanor of the witnesses as they testified, comparing such testimony with the testimony of the opposing witnesses, the interest of the witnesses and documentary evidence, I make the following

FINDINGS OF FACT

I. RESPONDENT AS STATUTORY EMPLOYER

The complaint alleges, Respondent admits, and I find that Respondent, a Rhode Island corporation, currently maintains an office and place of business in West Warwick, Rhode Island, where it has been engaged in the business of a subcontractor in the construction industry. During the 12-month period ending March 18, 1994, Respondent, in conducting its business operations, performed services valued in excess of $50,000 in States other than the State of Rhode Island. Respondent concedes, and I find, that at least since June 1, 1992, to the present time, Respondent has been and is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

[1] The Union's underlying unfair labor practice charge was filed on February 9, 1994, and served on February 16, 1994 (Jt. Exh. 7). The charge alleges two violations: (1) Respondent's refusal to provide information, inter alia, pertaining to its use of a nonunion alter ego, O. Ahlborg and Sons, Inc.; (2) that Respondent unlawfully has owned and operated a nonunion alter ego. On March 30, 1994, the Regional Director issued a complaint alleging violation of Sec. 8(a)(1) and (5), relating, however, only to Respondent's failure to provide the requested information to the Union. With regard to the assertion that Respondent unlawfully operated a nonunion alter ego, the Regional Director dismissed the charge under Sec. 10(b) of the Act. The Union apparently had reasonable cause to believe that Respondent was operating an alter ego as early as April 22, 1993, and yet failed to file an unfair labor practice charge regarding that status until February 14, 1994, more than 6 months after acquiring such knowledge. Pursuant to the restrictions imposed by Sec. 10(b), the Regional Director concluded that that portion of the charge was filed more than 6 months after the alleged unlawful conduct occurred and therefore was subject to the limitation provisions of Sec. 10(b) of the Act. However, the Regional Director issued complaint on the first assertion, above, that Respondent had unlawfully failed to furnish the Union with information regarding alter ego status requested by the Union on December 8, 1993.

The Regional Director also mentioned an alternative ground for the dismissal of the portion of the charge asserting the existence of the alter ego. She observed that the May 1992 agreement (between the Union and the alleged alter ego, O. Ahlborg & Sons, Inc.) which created Respondent appeared to be ambiguous: that although bargaining unit work was to be performed by Respondent, it might be plausibly interpreted to permit such work (allegedly siphoned off to the alter ego) by the alter ego. The Board does not resolve disputes over the interpretation of contract language. This alternative statement, however, did not refer to Respondent's alleged unlawful failure to supply the requested information.

II. THE UNION AS A STATUTORY LABOR ORGANIZATION

The complaint alleges, Respondent admits, and I find that at least since June 1992, the Union has been a labor organization within the meaning of Section 2(5) of the Act.[2]

III. THE ALLEGED UNFAIR LABOR PRACTICES

By virtue of admissions in the pleadings, the documents in evidence, a stipulation of facts (Jt. Exhs. 1–7) and pursuant to uncontradicted testimony of the two witnesses in this case (David F. Palmisciano, business agent of the Union, and Eric Ahlborg, president of Respondent) I make the following findings.

O. Ahlborg & Sons, Inc., a Rhode Island corporation with offices at 48 Molter Street, Cranston, Rhode Island, organized in April 1926, has been and is engaged in general building construction (G.C. Exh. 3). Its chief executive officer is President Richard W. Ahlborg; its chief operating officer is Vice President Glenn R. Ahlborg; and its chief financial officer and treasurer is Richard W. Ahlborg. Glenn Ahlborg is Richard Ahlborg's son. The three directors are Richard Ahlborg, Glenn Ahlborg, and Raymond L. Dauplaise.

Respondent's answer notwithstanding, pursuant to the testimony of Eric Ahlborg at the hearing, there is no dispute that O. Ahlborg & Sons, Inc. is the alleged ''alter ego'' about whom information was requested in the Union's December 8, 1993 request served on the Respondent. Under Rhode Island statutes, and its corporate reports, the registered agent for receiving process on O. Ahlborg & Sons, Inc. is Richard W. Ahlborg, 48 Molter Street, Cranston, Rhode Island.

Respondent, organized on June 1, 1992, to engage in the business of building construction and related activities, with its present office at 5 James Murphy Drive, West Warwick, Rhode Island, has Eric S. Ahlborg (son of Richard Ahlborg) as both the chief executive and operating officer and president of Respondent[3] regardless of the assertion in Respondent's annual report to the State of Rhode Island (G.C. Exh. 2), that Nancy B. Ahlborg, vice president, is the chief operating officer. The corporate secretary of Respondent is Craig W. Ahlborg (like Nancy B. Ahlborg, a child of Richard Ahlborg). The chief financial officer and treasurer of Respondent is Glenn R. Ahlborg (who, as above noted, is the chief operating officer and secretary of O. Ahlborg and Sons, Inc.). The directors of Respondent are Richard W. Ahlborg, Eric Ahlborg, Nancy Ahlborg, Craig Ahlborg, and Glenn Ahlborg. Respondent's registered agent for receiving process is Eric S. Ahlborg, 48 Molter Street, Cranston, Rhode Island. This address is not the address provided to the State of Rhode Island as Respondent's principal office (G.C. Exh. 2); rather, it is the address of O. Ahlborg and Sons, Inc., and the same address for receiving process as O. Ahlborg and Sons, lnc.[4]

At all material times prior to 1989, O. Ahlborg & Sons, Inc. was member of and bargained through the Rhode Island Chapter, Associated General Contractors of America, Inc. (AGC). In 1989, O. Ahlborg & Sons, Inc. executed a separate, 3-year collective-bargaining agreement with the Union containing substantially the same terms and conditions of employment as that contained in the agreement between employers who bargained through the AGC and with whom the Union had collective-bargaining agreements in Rhode Island.

On or about March 24, 1992, O. Ahlborg and Sons, Inc. served timely written notice, pursuant to Section 8(d) of the Act, notifying the Union (R. Exh. 2) that it was terminating its agreement as of May 31, 1992, in the presence of a contract clause providing for continuation from year to year unless either party notified the other of termination.

On May 29, 1992, as a result of collective bargaining with the Union's then business manager (Herbert F. Holmes), O. Ahlborg & Sons, Inc. confirmed to the Union that they had reached an agreement on May 28, 1992, whereby (1) there would be no interruption in production or the employment of union members together with their wages and benefits all due to the expiration of the collective-bargaining agreement on May 31, 1992, between O. Ahlborg & Sons, Inc. and the Union; (2) a new employer entity would be created no later than June 1, 1992, which would enter into a collective-bargaining agreement with the Union, to be retroactive to June 1, 1992; (3) O. Ahlborg and Sons, Inc. and the Union further agreed that all union bargaining unit work currently performed by O. Ahlborg & Sons, Inc. would be assigned to the new employer entity together with employees currently performing that work and that there would be no interruption in wages and benefits due to this assignment; and (4) the new employer, it was agreed, would perform future union bargaining unit work under the terms and conditions set forth in the new agreement between the Union and the new entity (Jt. Exh. 1).

Respondent was thereafter organized effective June 1, 1992 (G.C. Exh. 2) and entered into a 3-year (1992–1995) collective-bargaining agreement with the Union covering a unit described in article II of the new collective-bargaining agreement.[5]

The collective-bargaining agreement between UBI and the Union, for the period June 1, 1992, through June 4, 1995 (Jt. Exh. 6) provides (art. II, sec. 5):

> the Company will not subcontract any work covered by the terms of this agreement which is to be performed

[2] Respondent also admits that at all material times, Eric Ahlborg, president of Respondent, has been and is a supervisor and agent of Respondent within the meaning of Sec. 2(11) and (13) of the Act. Eric Ahlborg, testified in addition, that while he is the chief executive officer of Respondent, he has also been, at all material times, a project manager (and now a senior project manager) of O. Ahlborg & Sons, Inc.

[3] He receives no salary from Respondent. His sole salary comes only from his work as project manager for O. Ahlborg and Sons, Inc. He is a shareholder in both corporations.

[4] Telephone calls to Respondent's phone number reach an answering tape. Union Agent Palmisciano testified that he regularly reaches UBI by telephoning UBI President Eric Ahlborg at O. Ahlborg and Sons, Inc.

[5] Respondent concedes that the unit described in art. II of the collective-bargaining agreement (Jt. Exh. 6) is a unit appropriate for collective bargaining within the meaning of Sec. 9(b) of the Act; that UBI granted to the Union recognition as the exclusive collective-bargaining representative of the unit employees without regard to whether the majority status of the union had ever been established under the provisions of Sec. 9(a) of the Act; and that for the period commencing June 1, 1992, pursuant to Sec. 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the unit employees.

at the jobsite except to a contractor who holds an agreement with the United Brotherhood of Carpenters and Joiners of America, or one of its subordinates bodies, or, who agrees, in writing, prior to or at the time of the execution of the sub-contract, to be bound by the terms of this agreement.

This collective-bargaining agreement (Jt. Exh. 6, between UBI and the Union) was negotiated by the then business manager, Herbert F. Holmes. At that time David F. Palmisciano was a union business representative. He is now the business manager having replaced Holmes.

On December 8, 1993, Palmisciano, on behalf of the Union, sent the following letter to Eric Ahlborg at UBI because of three earlier onsite inspections he made in Rhode Island:

Dear Mr. Ahlborg:

We understand that you are operating a second company, which we believe is an alter ego.

Please fill out the enclosed questioner [sic] and return same to the District Council Office, as soon as possible.

Sincerely,

David Palmisciano
Business Representative

The enclosed questionnaire contained 79 questions relating, inter alia, to Respondent's ownership, corporate directors, suppliers, and its potential relationship to an alleged nonunion employer.

When Eric Ahlborg received the December 8, 1993 letter, he telephoned Palmisciano between December 15 and 18, 1993. Ahlborg asked him what the letter was about. Palmisciano told him that he needed the information to support litigation against UBI because there was a violation of the contract. Ahlborg told him that he was living up to the contract. Palmisciano testified that he needed the information to prove the alter ego status of O. Ahlborg and Sons, in a grievance proceeding[6] and in further litigation; that O. Ahlborg had previously complained of an inability to bid nonunion jobs which it had been prevented from bidding because of the now-expired collective-bargaining between O. Ahlborg & Sons, Inc. and the Union. Palmisciano further testified, without objection, that Holmes told him that the express understanding between Glenn Ahlborg (who negotiated the UBI contract with Holmes) and Holmes was that the new entity, UBI, as a union contractor, would be awarded all state, Federal, and other work where there were high wage rates, particularly Davis-Bacon or other statutory ''prevailing rates'' and that such work would all go to union carpenters.[7]

Palmisciano also testified concerning his spring 1993 visits to three jobsites that prompted his conclusion that UBI was using O. Ahlborg & Sons as an alter ego: the Independence House job in Providence; the Mount Hope High School job in Bristol, Rhode Island; and the Kaiser Mills job in Bristol, Rhode Island (housing for the elderly). All three of these jobs were ''high rate'' jobs requiring ''prevailing rates'' as the employee wage rate. There is no dispute that ''prevailing rates'' in such circumstances means union rates.

The Independence House job

O. Ahlborg & Sons, Inc. was the general contractor on the job doing direct carpenter work or supervising work of nonunion carpenter subcontractors. The carpenter superintendent on the job, however, Robert Jean, was a union member. Palmisciano found this union superintendent was driving around in an O. Ahlborg truck notwithstanding that Robert Jean told him that UBI was paying his wages . Palmisciano testified, that he concluded therefore, that a UBI employee (Superintendent Robert Jean), paid by UBI, in fact, was superintending the execution of carpenter work performed by nonunion Ahlborg employees or by employees of subcontractors (nonunion) chosen by Ahlborg. Palmisciano testified that the one thing that was clear was that UBI employees were not on the job performing unit work.

Mount Hope High School

Similarly, in the spring of 1993, he visited the Mount Hope High School job in Bristol, Rhode Island. It is uncontradicted that this job, like Independence House, was a ''prevailing rate'' job. On this job he found George Regis as the carpenter superintendent. Regis, a union member, was driving an Ahlborg truck. On this job, members of the Union, employed by UBI, were doing the carpentry and foundation work with O. Ahlborg and Sons, Inc., acting as general contractor. Palmisciano testified that he was on the job to enquire whether other carpenter work within the UBI contract's jurisdictional definition of carpenter work (drywall, hardwood floors, roofing, asphalt tile floors) was being done or going to be done by employees of nonunion subcontractors notwithstanding that that work, performed by such employees, was forbidden by the subcontracting clause in the collective-bargaining agreement. Other carpenter subcontractors were not yet on the job and Palmisciano was there to check on whether this work, not yet actually performed, was going to go to union subcontractors or directly to UBI employees. Palmisciano testified that he actually visited the job because the superintendent of the Independence House job had told him that the nonunion drywall contractor on the

[6] The collective-bargaining agreement between UBI and the Union (Jt. Exh. 6) contains an arbitration provision (art. XVI) covering all disputes interpreting, pertaining to, or arising out of the agreement.

[7] Respondent complains that Eric Ahlborg was not permitted to testify concerning the formation of UBI (Br. at p. 4). Eric Ahlborg was not privy to the Holmes-Glenn Ahlborg agreement. Palmisciano's belief, based on hearsay, nevertheless constitutes objective evidence of his understanding of that agreement, *Shoppers Food Warehouse*, 315 NLRB 258 (1994). There is no resolvable credibiity issue, on this record, created by any Eric Ahlborg testimony on this point. Contrary hearsay testimony of Eric Ahlborg, as to his hearsay understanding, in no way would affect or modify Palmisciano's reasonable belief though equally derived from hearsay. Nowhere in Respondent's offer of proof would Eric Ahlborg testify that he was present at the time of the agreement. Nor was Respondent prevented from enquiring from Eric Ahlborg regarding his presence at conversations at any time with the Union concerning the meaning or scope of the Holmes/Glenn Ahlborg agreement (Tr. 124). Nor did Respondent attempt to call Glenn Ahlborg to directly contradict the reasonableness of Palmisciano's hearsay belief derived from conversations with Union Business Manager Holmes, or even to provide the terms of the Holmes/Glenn Ahlborg agreement.

Independence job was going to be used on both the Mount Hope job and the Kaiser Mills job.

Kaiser Mills

At the Kaiser Mills job in Bristol, Rhode Island, with O. Ahlborg & Sons, Inc. as the general contractor, Palmisciano was there to attempt to get carpenter union subcontractors on the job. Palmisciano discovered that there were many nonunion contractors doing carpenter work on the job. Lindsay Ahlborg, on the job, gave him a list of carpenter unit subcontractors on the job, none of whom had collective-bargaining agreements with the Union. Such subcontracting necessarily affected jobs for unit (union) members and contributions to union pension and welfare funds.

Eric Ahlborg testified concerning conversations with Palmisciano on jobsites after the execution of the June 1992 contract between UBI and the Union. These conversations related entirely to Palmisciano's concern that subcontracting was being awarded to nonunion subcontractors on carpenter work including drywall, carpet laying, flooring, and metal stud work. Palmisciano was protesting the performance of union work, particularly drywall work, by nonunion subcontractors employing nonmembers. Palmisciano urged Eric Ahlborg to hire union people, union members, for such jobs. Ahlborg told him that he understood that Respondent was doing everything that it was supposed to do under the contract. Palmisciano replied that what UBI was supposed to do was to hire union members on prevailing rate jobs. Ahlborg told him that Respondent was living up to the agreement; that if there were UBI carpenters on the job, Respondent was then living up to all of its contract obligations on wage rates, pension contributions, and health and welfare contributions by correct payment to the UBI employees. Ahlborg testified that Palmisciano never told him that UBI was doing anything illegal or that it was an alter ego or double-breasting employer. Ahlborg further testified that UBI never subcontracted to nonunion carpenters or asked O. Ahlborg & Sons, Inc. to subcontract to nonunion contractors. On the contrary, he testified that he urged O. Ahlborg & Sons to give UBI as much work as possible.

Discussion and Conclusions

In the recent *Shoppers Food Warehouse*, 315 NLRB at 259, the Board stated:

> [I]t is well settled that an employer, on request, must provide a union with information that is relevant to its carrying out its statutory duties and responsibilities in representing employees. *NLRB v. Acme Industrial Co*., 385 U.S. 432 (1967). This duty to provide information includes information relevant to contract administration and negotiations. . . .
>
> [W]here, as here, the information sought concerns matters outside the bargaining unit, such as those related to single employer or alter ego status, a union bears the burden of establishing the relevance of the requested information. . . . A union has satisfied its burden when it demonstrates a reasonable belief supported by objective evidence for requesting the information. [Citations omitted.]
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> The Board uses a broad, discovery-type standard in determining relevance in information requests, including those for which a special demonstration of relevance is needed, and potential or probable relevance is sufficient to give rise to an employer's obligation to provide information. . . . In this regard, the Board does not pass on the merits of a union's claim of breach of a collective-bargaining agreement in determining whether the information relating to the processing of a grievance is relevant. [Citations omitted.]
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> . . . .
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> The Union [is] not required to show that the information which triggered its request was accurate or ultimately reliable, and a union's information request may be based on hearsay. [Citation omitted.]

As noted by the Supreme Court in *NLRB v. Acme Industrial Co*., 385 U.S. 432 at 438, the requirement that information of potential relevance be given to the Union upon the proper request in no way threatens the arbitration process. Indeed, the arbitration process (*NLRB v. Acme Industrial Co*., supra at 438–439):

> can function properly only if the grievance procedures leading to it can sift out unmeritorious claims. For if all claims originally initiated as grievances had to be processed through to arbitration, the system would be woefully overburdened.

The Supreme Court held that the object of forcing the employer to divulge potentially relevant information is to prevent forcing the union ''to take the grievance all the way through to arbitration without providing the opportunity to evaluate the merits of the claim.''

Where the Union establishes an objective basis for reasonably believing that O. Ahlborg and Sons, Inc. is the alter ego of UBI, the Union is entitled to the information necessary to establish whether its suppositions are true. *Maben Energy Corp*., 295 NLRB 149 (1989). On the other hand, a reasonable basis for believing that the two corporations have the same owners and perform work of the same type would not suffice to make the requested information about O. Ahlborg & Sons, Inc. relevant to the Union's performance of its collective-bargaining responsibilities. *Brisco Sheetmetal*, 307 NLRB 361 fn. 1 (1992) (then-Chairman Stephens concurring), citing *United Constructors*, 233 NLRB 904, 912–913 (1977).

In *Southern Nevada Home Builders Assn*., 274 NLRB 350 (1985), the multiemployer bargaining agent refused to furnish to the Union a roster of those builder-members that were bound to an agreement with the Union. The Board affirmed the administrative law judge's findings, in large part, based upon five reasons why the membership list was relevant to contract administration and enforcement purposes (*Southern Nevada Builders Assn*., supra at 351). Among these five reasons were (a) the Union needed to investigate the possibility of subcontracting procedures in violation of contract limitations and (b) the Union could use the information to investigate its suspicions about double breasting.

Palmisciano reasonably believed that O. Ahlborg & Sons, Inc. (Glenn Ahlborg) and the Union (Herbert F. Holmes, business manger) agreed that the purpose of the agreement creating UBI (Jt. Exh. 6), inter alia, was to permit O.

Ahlborg and Sons, Inc. to bid nonunion work and to award all ''prevailing rate'' jobs—the high paying jobs—to UBI. There is no dispute that all three of the jobs (Independence House, Mount Hope High School, and Kaiser Mills) which Palmisciano visited in the spring and summer of 1993 were all prevailing rate jobs. On the Independence House job, O. Ahlborg & Sons' employees were doing unit work and UBI was not on the job at all, notwithstanding UBI was paying the superintendent to supervise the unit work. At the Mount Hope High School job, Palmisciano suspected, on the basis of prior conversations with the superintendent on the Independence House job, that, in violation of the subcontracting restriction, the Mount Hope subcontractors on hardwood floors, drywalls, roofing, and carpeting, all carpenter unit work, would be nonunion. As Eric Ahlborg testified, when Palmisciano visited him on the jobs, Palmisciano was protesting the fact that drywall work was being done by nonunion employees and urged Ahlborg to hire more union help notwithstanding that Ahlborg repeatedly stated that O. Ahlborg & Sons, Inc. was living up to the collective-bargaining agreement between UBI and the Union.

Thus, on the grounds that UBI and O. Ahlborg & Sons, Inc. performed the same work, had common officers, directors, and shareholders; and that Palmisciano saw that at least on the Independence House job, in the presence of a union carpenter superintendent, UBI was not on the job and Ahlborg was doing carpenter unit work, UBI might well be in violation of the collective-bargaining agreement in permitting O. Ahlborg, as an alter ego, to do unit work. Palmisciano also reasonably believed that the agreement between Glenn Ahlborg and the Union that prevailing rate work would go to UBI and union employees, was being violated through the use of an alter ego (particularly since Glenn Ahlborg, vice president and director of O. Ahlborg and Sons, Inc. and its chief operating officer, is also a director of Union Builders, Inc. and works at 48 Molter Street along with Eric Ahlborg, not merely UBI's president, but O. Ahlborg's senior project manager). In short, therefore, the Union could reasonably believe, from the relationship between the two corporations, what it had been told concerning use of nonunion carpenter subcontractors and what it had seen on the three jobs, in conjunction with the agreement between Glenn Ahlborg and Herbert Holmes (giving ''prevailing rate jobs to the union'') that UBI was violating the collective-bargaining agreement with the Union. The Union had objective evidence that O. Ahlborg & Sons, Inc. might be delegating unit work, covered in the unit description in the UBI contract, to nonunion subcontractors, all because of the close relationship between the two corporations. In addition, the Union, particularly on the Independent House job, appeared to find Ahlborg & Sons' own employees (nonunion) performing unit work in direct violation of Palmisciano's understanding of the agreement between the Union and Glenn Ahlborg that ''prevailing rate'' jobs would go to UBI and union members. There is no dispute that the Independence House job was a ''prevailing rate'' job. The Union's informed administration of the contract, including protection and preservation of unit work (a mandatory subject of bargaining) is a *statutory* right in addition to any contract prohibitions against transfer of unit work. *Bently-Yost Electric Corp*., 283 NLRB 564, 567 (1987).

Here, the Union, alleging a breach of the UBI contract, threatening Eric Ahlborg that it was going to use the information for grievance purposes or litigation, was apparently attempting to protect the contract provision against subcontracting and was protesting the failure of the alleged alter ego corporation (O. Ahlborg & Sons, Inc.) to live up to Glenn Ahlborg's 1992 agreement awarding ''prevailing rate'' work to UBI. Again, Glenn Ahlborg (who did not testify) was a director of UBI and chief operating officer of O. Ahlborg & Sons, Inc. Thus, relevant to contract administration and enforcement purposes, I conclude, from the objective evidence Palmisciano found on the Independence House job, his understanding of the 1992 Holmes/Glenn Ahlborg agreement on prevailing rate jobs together with the UBI contract, and the intertwining of the two corporations, that, as the Board concluded in *Southern Nevada Building Assn*., supra at 351, the subcontracting procedures on the Mount Hope and Kaiser Mills jobs in possible violation of the contract reasonably supported union suspicions that the two corporations were operating Ahlborg & Sons, Inc. as an ''alter ego.''The evidence procured by the Union on the jobsites, together with the relationship of the corporations, the agreement to award prevailing rate jobs to UBI and the Union, and the resulting apparent violation of the subcontracting restriction in the UBI agreement constitute the objective evidence of unit work subversion by an alter ego supporting a reasonable belief for requesting the information. *Shoppers Food Warehouse*, supra; *Southern Nevada Home Building Assn*., supra. I conclude that there is, therefore, a prima facie case of an 8(a)(5) violation in UBI's refusal to supply the requested information.

Respondent's Affirmative Defenses

1. To the extent Respondent affirmatively defends on the ground that the Union has never had and does not have a reasonable belief based on objective evidence that Respondent has been operating a second company (O. Ahlborg & Sons) as an alter ego, I have found to the contrary, above. To the extent that Respondent defends on the ground that O. Ahlborg's agreement to the creation of UBI constitutes a waiver of the issue whether O. Ahlborg is an alter ego of UBI, the defense is not supported by any facts.

2. To the extent that Respondent defends on the ground that the Board's dismissal of the substantive assertion (in the charge) of the *existence* of an alter ego, on the basis of Section 10(b) of the Act, moots the Union's request for *information*, the Respondent has supported that defense with no citation of authority. The Board, under the terms of Section 10(b), dismissed only the substantive allegation that O. Ahlborg & Sons, Inc. was, in law, the alter ego of Respondent. That is a distinctly different issue from, and not necessarily legally related to, the instant issue: whether Respondent is obligated to furnish information to the Union which, as it threatened, it will or might use (in a forum other than the National Labor Relations Board) to prove alter ego status. The most that can be said of the Regional Director's dismissal of the first ground in the charge was that the statutory time limitation in Section 10(b) forbade the Regional Director from passing on the question of the legal alter ego status of O. Ahlborg & Sons, Inc. Such a limitation and prohibition, however, may not apply in any arbitration process or other litigative forum into which the Union is threatening

to thrust Respondent. I thus reject Respondent's defense of mootness based the 10(b) dismissal of the substantive alter ego section of the charge. To the extent Respondent defends on the Regional Director's alternate ground, the most that can be said is that she determined that agreements of ambiguous character do not supply a basis for a statutory violation. But Respondent can draw little comfort from the Regional Director's alternate determination. For the very information that Respondent refuses to supply may aid the Union in prosecuting (or withdrawing from) its belief in the existence of an alter ego. That is precisely the underlying rationale in *Acme Industrial Co*., supra at 438–439.

3. To the extent Respondent defends on the ground that Section 10(b) barred the complaint because all the complained—of activity occurred before August 14, 1993, a date more than 6 months prior to the filing of the charge, I find the defense to be factually unsupported. The crucial date is the date upon which the Union demanded the information (December 8, 1993), not the dates on which the evidence to support the demand was procured. The February 14, 1994 charge relates to enforcement of a collective-bargaining agreement which, though executed well outside of the 10(b) period (June 1992) extends through 1995. It is the enforcement of that contract, in particular, with its prohibition against subcontracting that is the predicate for the request for information. The complaint does not allege, nor does the Union assert, that any act of subcontracting or work performance violates the Act. That the Union had objective evidence of contract violation outside of the 10(b) period in no ways bears upon the relevance of the information requested for the Union's current enforcement of the contract *within* the period of the present existing collective-bargaining agreement between Respondent and UBI (1992–1995). The issue is restricted to the Union's belief in the existence of an alter ego. If Respondent's position is that regardless of the objective of evidence outside the 10(b) period, it has no longer violated the contract with regard to subcontracting or the awarding of prevailing rate work, through an alleged alter ego relationship with O. Ahlborg & Sons, Inc., UBI has nevertheless failed to support such a defense with any evidence.

The resolution of the question concerning the obligation of Respondent to furnish the Union with information requested in the questionnaire, in no way passes on the ultimate question whether O. Ahlborg & Sons, Inc. is the legal alter ego of UBI. Respondent, nevertheless, has failed to rebut General Counsel's prima facie case regarding the unlawful failure to supply information on alter ego status. That information was relevant and necessary to the Union's policing of the UBI collective-bargaining contract; the Union had a reasonable belief that O. Ahlborg, as alter ego, was the beneficiary of a breach of that contract.

CONCLUSIONS OF LAW

1. The Respondent, Union Builders, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By failing or refusing to provide the Union, in writing, with the information requested in the Union's letter and questionnaire of December 8, 1993, Respondent has unlawfully refused to bargain with the Union and has engaged in, and is engaging in, unfair labor practices in violation of Section 8(a)(5) and (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has violated Section 8(a)(5) and (1) of the Act, it is recommended that it cease and desist therefrom, take the affirmative action of supplying the requested information and the posting of the usual notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[8]

ORDER

The Respondent, Union Builders, Inc., West Warwick, Rhode Island, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively in good faith with District Council 94, United Brotherhood of Carpenters and Joiners of America, AFL–CIO (the Union) by refusing to furnish the Union with the information, in writing, requested in the Union's letter and questionnaire of December 8, 1993.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Forthwith furnish the Union with the information requested in its letter and questionnaire of December 8, 1993.

(b) Post at its office and other facilities in West Warwick, Rhode Island, copies of the attached notice marked ''Appendix.''[9] Copies of the notices on forms provided by the Regional Directorfor Region 1, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of the Order what steps the Respondent has taken to comply.

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[8] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively in good faith with District Council 94, United Brotherhood of Carpenters and Joiners of America, AFL–CIO (the Union) by refusing to furnish the Union with the information requested in the Union's letter and questionnaire to us of December 3, 1993.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed by Section 7 of the Act.

WE WILL furnish the Union with the information requested in its letter and questionnaire to us of December 8, 1993.

UNION BUILDERS, INC.